



EMPLOYMENT TRIBUNALS

Claimant: Mrs D A Thompson

Respondents: Conwy & Denbighshire Mental Health Advocacy Services (R1)
Mr E. Williams (R2)

HELD AT/BY: Wrexham by CVP **on:** 21st March 2024

BEFORE: Employment Judge T. Vincent Ryan

REPRESENTATION:

Claimant: Mrs Thompson represented herself (a “Litigant in Person”)

Respondents: Mr D Jones, Counsel

PRELIMINARY HEARING JUDGMENT

JUDGMENT having been sent to the parties on 25th March 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction:

1. The hearing was conducted remotely via CVP, commencing at 10 AM and concluding following an oral judgment and consequential case management, at 17:05; there were breaks at 11:37- 11:55 and 12:55 – 14:15.
2. The Claimant represented herself and did so very ably; I am confident that she understood what was required of her, and the practice and procedure adopted. The Respondents were represented by Counsel who assisted both the Claimant and me by his clarity and professionalism.

3. The Claimant affirmed the truth of her witness statement providing a written statement and answers under cross examination by Counsel, and by way of explanation to me. She had understood that the Respondents would also provide witness statement evidence, but I explained that it was not required or previously indicated. I explained that this was not a trial of the full merits of her claims but was consideration of the preliminary issue as to whether her alleged disclosures satisfied the statutory definition of “protected disclosures”. The Claimant Indicated that she understood and accepted this.
4. The Claimant’s evidence commenced at 10:24 AM and was concluded by 12:55 PM when we adjourned for lunch. Before adjourning I checked with the Claimant that she had answered questions as fully as she wished and that she was satisfied she had raised all the matters and documents she wished me to take into account.
5. We returned at 14:15 for submissions. Mr. Jones made oral submissions concluding at 14:55. The Claimant then commenced her oral submissions concluding at 15:13. Mr. Jones did not reply. I then further adjourned for my deliberations and judgement.
6. I commenced delivering oral judgment, at dictation speed, at 16:21 concluding at 16:36.
7. On 2 November 2023 Judge Howden-Evans defined the generic issues to be determined today and set out her understanding of the alleged disclosures relied upon by the Claimant; in her evidence and submissions today the Claimant deviated from reliance on Judge Howden-Evans’ iteration of the disclosures; in my findings of fact below I specify where the Claimant, despite and not because of questions put to her, stated her case today with different framing to that of Judge Howden-Evans. Counsel for the Respondents cross-examined the Claimant on the case she put today, highlighting to her in cross-examination and in submissions that the Claimant’s case had changed, and where and how it had changed; the Claimant answered cross-examination questions clearly and confidently; she replied to the Respondents’ submissions and did not contradict that she had re-framed certain of her alleged disclosures today.
8. In consequence of my finding that some of the alleged disclosures were not protected disclosures, Counsel submitted that certain detriment claims ought to be dismissed. This was agreed and those claims were duly dismissed following full explanation to the Claimant. The dismissed detriment claims related to specific disclosures and thereby the relevant chronology. The Claimant confirmed the date of her sickness absence and removal from a particular case which led her to withdraw her allegation of the following detriment: “In January 2023, whilst the Claimant was on sick leave, Elfed Williams decided to remove her from AA’s case” (paragraph 5.1.8. of Judge Howden-Evans’ minutes of the case management preliminary hearing of 2nd November 2023).
9. We then dealt with case management generally, and I made preparatory orders towards the final hearing by agreement with the parties.

Documents:

10. I was provided with a hearing bundle comprising 150 pages and separate index, together with a witness statement from the Claimant (which I read in advance of the hearing). During the course of the hearing Counsel provided a further copy of an email/text message that was a duplicate of a page in the hearing bundle (p101), disputed by the Claimant. I read all documents to which I was referred.

The Issues:

11. The generic issues in this case were outlined by Employment Judge Howden-Evans at a preliminary hearing held on 2 November 2023 and they are agreed as set out below. In a situation where the Claimant says that she made six protected disclosures, the issues that I had to decide upon in respect of each alleged disclosure were:

11.1. Did the Claimant disclose information?

11.2. Did the Claimant believe the disclosure of information was made in the public interest?

11.3. Was the belief reasonable?

11.4. Did the Claimant's belief tend to show that:

11.4.1. a criminal offence had been, was being, or is likely to be, committed?

11.4.2. A person had failed, was failing, or is likely to fail to comply with any legal obligation, namely that there have been breaches of legal obligations owed to AA and a breach of the duty of care owed to AA?

11.4.3. A miscarriage of justice had occurred, was occurring or is likely to occur?

11.4.4. The health or safety of any individual had been, was being, or is likely to be, endangered? And/or

11.4.5. information tending to show any of these things had been, was being or is likely to be, deliberately concealed?

11.5. was that belief reasonable?

11.6. There is no issue that if the Claimant made any qualifying disclosures, then they were protected disclosures because they were made by the Claimant to the Claimant's employer, R1.

The Facts:

12. Contextual Facts (confirming the case summary set out by Judge Howden-Evans

on a previous occasion in so far as I heard evidence upon the following matters):

12.1. R1 is a charity that provides advocacy services for vulnerable young people and adults with mental health needs; R2 is the chief executive of R1; the Claimant was employed by R1 from 1 November 2021 until her dismissal on 10 May 2023, as an Independent Mental Health Advocate.

12.2. The Claimant's role, working in a medical environment mostly with people who have been sectioned with mental ill-health, was to ensure that their civil rights were upheld.

12.3. The Claimant had an issue specifically with a colleague, VF, who is an Independent Mental-health Capacity Advocate (IMCA), who worked with people not only lacking mental capacity but also lacking family or friends who looked after their interests.

12.4. At the root of the Claimant's claims is the service provided to two brothers, referred to throughout as AA and AB, and their nursing home arrangements. VF had prior involvement in the case of AA, but the Claimant says that her case had been closed before the events giving rise to her present claims. Furthermore, she says that VF had no standing because AA and AB had a cousin who could look after their interests.

12.5. The Claimant was assigned to AA's case, until she was taken off it by R2 (a claimed detriment).

12.6. There was a proposal that AA and AB should reside in different nursing homes (which were about one hour's travelling distance apart); the Claimant, in her role as an advocate for AA, was opposed to this; she asserts that VF supported the proposal; VF told the Claimant that she was to attend a "best interests" meeting in respect of the Claimant's client AB. The Claimant says that VF cited to her a conversation she had had with AA in October 2022 in which he expressed the desire not to live in the same nursing home as his brother. The Claimant says that her client lacked the capacity to make such informed decisions since her involvement with him in July 2022; for this and other reasons she doubted that such a conversation had taken place in any event.

12.7. The Claimant believes that VF should not have been involved in consideration of these residential arrangements, and suspected that she was providing misleading information to support the proposal that the brothers live apart. She was however prepared to engage further with VF to check what, if anything, VF would commit to confirming in relation to her involvement with AA and his residential preferences.

12.8. The Claimant took an opportunity to read through VF's case notes. The Claimant says the notes showed that VF's case with AA closed in July 2022 and indicated AA's inability to comprehend questions put to him, and furthermore that she had a conversation with a social worker expressing her support for the proposed residential arrangements (a conversation the Claimant says VF had denied having). I have not seen the said case notes or heard evidence from VF, and so I make no findings of fact as to what the Claimant says, save that she read case notes.

13. Alleged Protected Disclosure No 1: 5 January 2023 in a Teams message from the Claimant to JH (the Claimant's line manager) (page 82 of the preliminary hearing bundle, to which all page references refer unless otherwise stated) stating that VF was providing misinformation about service user AA and unduly influencing a decision to dismiss the consideration of the brothers (AA & AB) being housed in the same nursing home (and the Claimant was given the opportunity by Counsel and to assert that her disclosure was elsewhere than p82, such as at p.88, but she was adamant that she relied upon p82):

13.1. The message effectively comprises three sections:

13.1.1. The context, being that the Claimant wanted "to get something off [her] chest", but that she did not wish anything to be done about it at this stage (although she may change her mind later). This statement does not disclose any information other than the Claimant's reasoning.

13.1.2. The issue, being that in her opinion VF was not truthful about her communications with a social worker and AA, and saying that AA did not wish to reside in the same home as his brother AB. The Claimant says that VF was misrepresenting his wishes. This was information potentially showing a breach of legal obligation; however, it was expressed in terms of giving VF an opportunity to clarify her position; the Claimant was proposing a plan of action to clarify whether or not VF was in breach of a legal obligation. The Claimant was therefore not making a disclosure in the public interest but devising a scheme and explaining the rationale for doing so. The Claimant was open to explanation, interpretation, or denial by VF of what the Claimant understood to be her position. The Claimant was not, at least yet, in a position to provide information tending to show a breach of legal obligation or a safeguarding issue, or criminality; she did not feel able to do so without first speaking to VF.

13.1.3. The plan, the Claimant explained that she was going to ask VF if she had been confused, thus giving her the opportunity to either satisfy the Claimant that there was nothing untoward or to provide the background upon which the Claimant could pursue a public interest disclosure.

14. Alleged Protected Disclosure No 2: In her evidence the Claimant deviated from the alleged disclosure as summarised by Judge Howden-Evans, which recorded the Judge's understanding of what the Claimant said to R2 and JH (the Principal

Advocate, and her line manager) during an online Teams meeting on 9 January 2023. In accordance with her evidence at the hearing I find that the Claimant asked or said the following:

- 14.1. She asked R2 and JH to check VF's recorded case notes; in doing so she did not provide information but only suggested a course of action.
- 14.2. She asked that they intervene in an issue she had with VF; in doing so she did not provide information but asked for support.
- 14.3. She said that if she attended AA's "best interests" meeting with VF, she would have to challenge VF and that it would not look good for her or for R1; in doing so she did not provide information but stated her conditional position with regard to VF, dependent upon joint attendance at the meeting and whatever VF may say at it;
- 14.4. She stated that she did not want to attend the "best interests" meeting which VF said that she intended to attend; in doing so she did not provide information but merely stated her opposition in relation to attendance at the meeting.
- 14.5. The Claimant did not disclose any information to R2 and JH at that meeting; in her evidence the Claimant specifically confirmed that she was not relying upon the messages at pages 89-90 which led to the calling of that meeting, but rather what transpired at the meeting as above.

15. Alleged Protected Disclosure No 3: A text message to JH dated 12 January 2023 which was not disclosed by either party for this hearing; the Respondents had believed that this was a reference to page 101 of the bundle; the Claimant maintained that it was a reference to a different message which she was unable to produce and she contends that p.101 is a mixture of text message and email but it is not the text message that she sent:

- 15.1. the Claimant sent a text message to JH, but it is not available to me.
- 15.2. in the text message the Claimant said that the "best interests" meeting had been "every bit as terrible and even worse than [she had] expected"; this was an expression of an opinion and did not disclose any information to JH.
- 15.3. Furthermore, the Claimant expressed the opinion that AB had not had a fair hearing, which again did not disclose information other than that she held an opinion.

16. Alleged Protected Disclosure No 4:

- 16.1. That on 12 January 2023 during a telephone conversation with KRB the Claimant told her that at the "best interests" meeting it was clear to her that:

- 16.1.1. AB was being kept at a nursing home when there was no legal framework in place to keep him there and to prevent him from leaving and
- 16.1.2. AB had tried to get out of the upstairs window of the nursing home to leave it, which she said was a safeguarding concern AB.
- 16.2. The Claimant telephoned KRB on 12 January 2023 and that telephone call was recorded by R1 but auto deleted after 90 days and was not retained.
- 16.3. During the said telephone conversation, the Claimant told KRB that she had read VF's relevant case notes, and she relayed information from those notes, accepting them to be a true account as they were an official record. Given VF's status and the importance of formal case notes, the Claimant had good reason to believe that the notes were accurate and truthful.
- 16.4. The Claimant told KRB that AB had attempted to climb out of an upstairs window because he was not allowed leave the nursing home. The Claimant disclosed this event as a fact.
- 16.5. The Claimant told Ms Ross Bowker that there was no legal framework in place to support the deprivation of AB's liberty. This was the Claimant's understanding because she asked about the legal framework at a meeting, and it was confirmed to her that there was nothing in place; she disclosed it is a fact.
- 16.6. The Claimant categorised the information at 16.4 and 16.5 above as safeguarding issues on the basis of her professional expertise and experience.
- 16.7. The said information, as so categorised, was intended to show that there had been a breach of legal obligation towards AB in that correct legal procedures had not been put in place and the safeguarding issues had not been recognised which therefore also gave rise to endangerment to health and safety.
- 16.8. The Claimant's understanding of KRB's response when asked what the Claimant should do, was that she could do nothing either as a professional (because AB was not her client) nor as a private citizen either.
17. Alleged Protected Disclosure No 5: on 12 January 2023, following the above-mentioned telephone conversation with KRB, the Claimant sent a text message to JH explaining what had been discussed on the telephone and expressing concern about the advice she had received during that conversation.
 - 17.1. There is no record before me of this text message, the Claimant denying that it is at page 101. The Claimant says page 101 is a composite document comprising text and emails, but that page 101 does not sound the way that she would have expressed herself in a text message.

- 17.2. The Claimant sent a text to JH about her conversation with KRB in which she repeated that AB was being kept against his will without a legal framework in place preventing him from leaving the nursing home but that he had tried to escape through a window. The Claimant repeated to JH information she had read in VF's notes and what she was subsequently told at a meeting, reiterating what she believed to be facts that she had already disclosed to KRB.
- 17.3. In the same text message, the Claimant said to JH that she had asked for advice, and KRB said that there was nothing she could do because AB was not her client, and there was nothing she could do as a private citizen either.
- 17.4. The Claimant sent her text to JH because she was concerned at the consequences of the advice, she understood she had received from KRB. She wanted JH to know of the conversation, the report she had made, the advice she had received, and she wanted further guidance and reassurance from JH as well as wishing to draw all these matters to her line manager's attention for further action to protect AB.
18. Alleged Protected Disclosure No 6: an email dated 16 January 2023 from the Claimant to R2 expressing concern about the advice given by KRB on the telephone on 12 January 2023 (page 110):
- 18.1. the Claimant described her email as being a "light touch" disclosure.
- 18.2. The Claimant disclosed that she had raised a safeguarding issue and received certain advice. She did not tell R2 what the safeguarding issue was. She repeated her understanding of KRB's advice that there was nothing she could do for someone who was not her client, even as a concerned citizen.
- 18.3. The Claimant said that she would be interested in R2's views and whether she was correctly informed, that there was nothing she could do (about an unspecified concern) either as a professional or as a private citizen.
- 18.4. The Claimant confirmed her intention to rest.

The Law:

19. Section 43A Employment Rights Act 1996 (ERA) defines a protected disclosure as being a qualifying disclosure as defined by s.43B ERA, which is made in accordance with any of the sections 43C to 43H.
20. Section 43B ERA defines a qualifying disclosure as one of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the listed matters, which include for today's purposes, criminality, whether a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject, or that the health or safety of any individual has been, is being, or is likely to be endangered.

21. Sections 43C to 43H ERA specify to whom qualifying disclosures may be made, but in the instant case there is no dispute that if disclosures were made, they were properly made to the Claimant's employer (section 43C ERA).
22. It is essential that information was passed from the Claimant to her employer; this must be more than a complaint or opinion but must tell the employer something of some substance, a fact.
23. It does not matter whether the Claimant is accurate or not, provided she had a reasonable belief that what she was saying tend to show, in this case, criminality, a breach of legal obligation or endangerment to health and safety.
24. The disclosure must be made in the public interest and not be merely self-serving or arbitrary. It is generally understood that the person making the disclosure does so with a view to corrective or precautionary action, or at least consideration thereof for the good of others, although that is not the statutory requirement; the requirement is that the worker reasonably believes that the disclosure is made in the public interest.
25. In essence I must ask myself:
 - 25.1. Did the Claimant disclose information, facts (with specificity)?
 - 25.2. Did she believe that the information tended to show criminality, a breach of legal obligation, endangerment to health and safety?
 - 25.3. If so, was that belief objectively reasonable?
 - 25.4. Did the Claimant believe that she was acting in the public interest?
 - 25.5. Was that belief objectively reasonable?
26. It is important and useful for the parties to agree a list of issues for a hearing, whether it be a preliminary hearing or final hearing. That said, the list of issues is meant as a guide clarifying matters and not an overly legalistic constraint; it is not a pleading, but a set of questions relying on an interpretation and understanding of the Claim and Response. Whilst being wary to stray from an agreed list of issues, the overriding objective of the Tribunal must first be served, namely that the interests of justice are paramount. The list is intended to define, and therefore limit, issues but if it inadvertently misstates what a party intended then I consider it appropriate to take a purposive approach and allow some flexibility, provided there is no injustice to either party. It is appropriate to consider the balance of prejudice to either party of flexing the list or not. In this case the Claimant, a litigant in person, clearly had not understood what was set out in the "agreed" list of issues and, under questioning, she clearly, and on reflection, stated her case. I am satisfied also that the Respondents were not prejudiced, and that Counsel was able to challenge the Claimant's revised iterations.

Submissions:

27. The Respondents' Submissions: Counsel for the Respondents made legal submissions consistent with my explanation of the law above, and went on to submit:
- 27.1. The Claimant had pinned her colours to the mast in the preliminary hearing with judge Howden-Evans who produced a comprehensive list of issues although it was clear today that she was attempting to have "a second bite of the cherry" by arguing differently.
- 27.2. In relation to the first alleged disclosure the Respondents had thought this was a reference to page 88, yet the Claimant has categorically stated that she was referring to page 82; no legal obligation is identified on page 82. There are three messages referred to by the Claimant and only the second one could possibly disclose information, namely an allegation of untruthfulness. In fact she was saying that she wants to get matters off her chest and did not want any action to be taken; the three messages are to be read together, and as they only refer to the Claimant's own plan of action where no other action was required by anyone else, this cannot be said to have been a disclosure made in public interest.
- 27.3. The second disclosure described by the Claimant is very different from the list of issues. This is an invitation for the Respondents to check notes, to intervene, a statement of intention to challenge VF and the stated wish not to attend a meeting. No information is disclosed. This is self-serving and not the public interest. The Claimant was specific that she was not relying on pages 89 to 90 which led to the meeting.
- 27.4. The Claimant queried whether the third disclosure at page 101 was her text messages and email. She has not produced a separate text message. During the course of the hearing Counsel produced a replica of the email and there is no evidence of a separate message. In any event the Claimant's evidence is that she gave her opinion as to how badly a particular meeting went; she was disappointed. In any event AB was not a client of hers and she does not know all the information regarding his situation, so any belief she held was unreasonable at that stage. Nothing in the alleged disclosure shows an objectively reasonable belief that was made in the public interest.
- 27.5. The fourth alleged disclosure is the conversation with RKB in which she stated an opinion about somebody who was not her client; the actual wording is not available to us, but she says that she has given in evidence the sentiment that she tried to express. As she was not involved with AB, she cannot show that she had a reasonable belief in the truth of what she says and, in any event, she falls foul of the public interest test; she was not privy to that information. The Claimant said in evidence that page 102 could not be further from the conversation that was had; she says page 101 is more accurate and that is only a retelling of what had been said at a meeting.

27.6. The fifth disclosure in the list of issues is set out at page 101 and is about advice given by KRB but the Claimant now says she was not so concerned about the advice but its consequences. The Respondents say that there has been a misunderstanding and in the circumstances the Claimant has not disclosed evidence tending to show any of the matters listed in section 43B ERA. For this to be a protected disclosure it must have been a failure of legal obligation by KRB, but the Claimant is not saying this; she is rather saying that she was concerned about the consequences of advice.

27.7. Once again, the sixth alleged disclosure has now been dated as 24 January 2023 and not as set out in the list of issues, namely an email of 16 January 2023. The Claimant now says she was referring to page 110. That is only seeking guidance from her manager; it does not contain information other than that she is losing sleep. There is no specific content.

27.8. The Claimant has not made any protected disclosures therefore her entire claim comes to an end today.

28. The Claimant's Submissions:

28.1. The first disclosure was made to JH, but she was "going lightly" because of the culture within R1; there would be no action taken without some formal complaint and she was "navigating the culture". She was fearful of retaliation therefore she was indirect as a whistleblower at this stage, although she found out later what would work better.

28.2. Disclosure number 2: she was not letting the matter go and because JH would not support, she was putting the matter to R1.

28.3. The text message setting out disclosure number 3 should have been in the hearing bundle because the Claimant sent it to the Respondents.

28.4. The fourth disclosure could not be any clearer. The Claimant says she followed procedure, that she was gentle with R2 because he had shouted at her. At the meeting she was told that there was no framework, (this information was not gleaned from the case notes). The Claimant had it confirmed to her and she in turn told KRB.

28.5. The Claimant says that she sent the fifth disclosure by way of a text message, which the Respondents have effectively acknowledged in their E.T. 3 Response; it should therefore have been in the bundle. The Claimant had been anxious to get matters resolved and she wanted R2 to intervene, but he did not.

28.6. The sixth disclosure by way of email to R2 was requesting his advice, asking him to listen to the recording and make up his own mind. She said that she could only prove the case because she had read VF's notes, but following making this known, R2 changed the policy so that no-one could read another caseworker's notes.

Application of law to facts:

29. The list of issues records that the Claimant says that she made protected disclosures giving information to her employer tending to show criminality, breach of legal obligation specifically to AA, breach of duty of care specifically to AA (which I consider may be either a breach of legal obligation or endangerment to health and safety) and/or endangerment to the health and safety of an individual, where the agreed list of issues does not specify that individual.
30. There is no amendment application before me, but I was required to consider the nature of the alleged disclosures and whether or not the Claimant had made protected disclosures in relation to criminality, breaches of legal obligation, and endangerment to health and safety. Whether the disclosures were protected or not, the Claimant has referred to matters of legal obligation and protection of health and safety relating to both AA and to AB.
31. From the evidence at this hearing, it is clear that the Claimant had the following concerns:
- 31.1. AA would not be housed with his brother based, at least in part, on what she considered to be a false statement by VF. She says that VF relied upon a conversation (which she doubted had occurred), with AA at a time when he lacked mental capacity to make a decision about whether he lived with his brother or not.
- 31.2. That VF was being untruthful about, and was interfering in relation to, one of the Claimant's clients.
- 31.3. That AB's liberty was being deprived and that he was required to live in a particular nursing home when there was no legal framework in place to cover this situation.
- 31.4. That AB had attempted to climb out of a window in circumstances where there was no legal framework requiring him to remain at the said nursing home, and this amounted to a safeguarding issue.
- 31.5. That a person in authority over her advised her that there was nothing she could do either in her professional capacity or as a private citizen in relation to AB situation.
32. The Claimant concentrated upon legal obligations and the health and safety, (safeguarding), matters. There was no specific reference in evidence or submissions (let alone in any of the disclosures although citing statute law is not required) to criminal acts by any person, or to criminal statutes. I do not consider that the case is made out there was disclosure of information tending to show criminality or indeed that that was the Claimant's intention or belief. Perhaps in the case of AB reference to absence of a legal framework indicates unlawful detention, but at no stage of the hearing did it appear that the Claimant argued that a particular person had committed a criminal offence.

33. Disclosure No1: on 5 January 2023 in a Teams message to JH the Claimant disclosed that she believed VF was untruthful, but also seemed to give her the benefit of the doubt and wished to give her another opportunity to clarify her previous statement. She did not want anything to be done about this. She was setting out her rationale for a plan to establish whether or not VF would be truthful at a “best interests” meeting. She was in a sense speculating based on what she understood to be VF’s position, and how she may confirm it or alter it. This indicates that the Claimant was open to the possibility she herself was in error, but also that she would give the benefit of the doubt to VF. Either way she did not want any action to be taken by those in authority. The disclosure, such as it was, was to explain her situation, getting it off her chest, and to provide her with some cover for her enquiry of VF. This was self-serving (by which I do not mean any criticism), but it was not disclosure made in the public interest. It raised the possibility that there may have been a breach of legal obligation to AA as alleged, which may entail a breach of duty of care to AA as alleged; such breaches of legal obligation and duties of care may lead to endangerment to health and safety but it does not appear that the Claimant saw that situation had yet been reached. For these reasons I do not consider this to have been a protected disclosure.
34. Disclosure No2: on 9 January 2023 at a Teams meeting the Claimant asked R2 and JH to check certain case records, to intervene if necessary, and she said that she would have to challenge VF. She did not disclose information other than the fact that she did not wish to attend the public interests meeting with VF present. The Claimant was adamant about the component parts of this disclosure and yet, in the way that she put it, it was clear that she did not disclose information at the meeting as she had, presumably inadvertently, made Judge Howden-Evans believe at the November preliminary hearing. The Claimant has not proved that the disclosures at the meeting amounted to information tending to show any breach of legal obligation to AA, breach of duty of care to him, or endangerment to health and safety of any individual. This was not a protected disclosure as it was put by the Claimant at this hearing.
35. Disclosure No3: I accept that on 12 January 2023 the Claimant sent a text message to JH, although I have not seen it. I believed her. In that message she reported that she found the public interests meeting to have been “terrible” and she also stated the opinion that AB did have not had a “fair hearing”. She did not impart any information or facts, in that there was no specificity, behind her stated opinions. She did not disclose information tending to show breaches of legal obligation or duty of care to AA or endangerment health and safety of any individual. For these reasons this did not amount to a protected disclosure.
36. Disclosure No4: on 12 January 2023 in conversation with KRB the Claimant told her that AB had attempted to climb out of a window which is a specific statement of fact. She also said that she was aware, she had been told a meeting, that there was no legal framework for keeping AB resident in the nursing home where he had been placed; this was a specific statement of fact as she understood it. She had read certain case notes relevant to these matters. She had specifically asked for confirmation regarding the legal framework at a meeting and had received confirmation that there was none. The Claimant had reason to believe that the matters that she told KRB about were true. She raised them with KRB as

a person in authority so that something could be done in the best interests of AB. She reasonably believed that seeking KRB's advice would be in the public interest as would notifying her formerly of these matters. I consider that this was a protected disclosure. The disclosure is of breach of legal obligation to AB and endangerment of his health and safety. It did not relate to any breach of legal obligation or duty of care to AA.

37. Disclosure No5: on 12 January 2023 the Claimant sent a text message to JH in which she repeated what she had told KRB, and KRB's advice that she could do nothing further about it. Insofar as she repeated matters told to KRB, the Claimant has made a further disclosure by text message on 12 January 2023 to JH. Once again, this related to breach of legal obligation and danger to health and safety of an individual, namely AB and did not relate to breaches of legal obligation or duty of care to AA.
38. Disclosure No 6: on 24 January 2023 the Claimant sent an email to R2 in which she asked for his opinion about advice that she could not do anything to assist somebody either in a professional capacity or as a private citizen. She was asking for an opinion on advice. She did not impart any information with specificity tending to show breach of legal obligation or duty of care to AA or endangerment to the health and safety of an individual. This did not amount to a protected disclosure. I consider that the reference in the list of issues to this email having been sent on 16 January 2023 was an error; I have seen the email in question, and it is clearly that of 24 January 2023.
39. In summary therefore, I find that the Claimant has made two protect disclosures and they both related specifically to AB. In that the Claimant was raising matters about where AB was housed, she may feel that she was tangentially raising matters pertinent to the well-being of AA. She wished the brothers to be housed together. In raising matters relating to AB however she did not provide information with sufficient specificity tending to show breaches of legal obligation or duty of care or even endangerment to the health and safety of AA.
40. I have addressed each disclosure. I have not been asked to consider, and I have not considered, whether my findings of fact and this judgment necessitate any application to amend the claim.
41. Counsel for the Respondents submitted that in the light of this judgment certain allegations of detriment on the ground that the Claimant had made certain protected disclosures ought to be dismissed, taking into account the interrelationship of chronology between the alleged detriments to protected disclosures that I have found. This was explained to the Claimant. She accepted the explanation. The reason for dismissal of some allegations of detriments is that they predate the two protected disclosures found.

Employment Judge T V Ryan
Date: 23 April 2024

REASONS SENT TO THE PARTIES ON 24 April 2024

FOR THE TRIBUNAL OFFICE Mr N Roche